

**KUTAK ROCK LLP**

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*Counsel for Bruce E. Robinson, Trustee*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

IN RE: PEAK 3 CONSTRUCTION, LLC

Case No. 17-34379-KLP  
Chapter 7

Debtor.

**TRUSTEE'S MOTION TO SELL PROPERTY OF THE ESTATE BY AUCTION AND  
TO PAY COMMISSIONS AND EXPENSES TO AUCTIONEER FROM SALES  
PROCEEDS  
AND  
NOTICE OF MOTION**

Bruce E. Robinson, Trustee for the Bankruptcy Estate (the "Trustee") of Peak 3 Construction, LLC (the "Debtor"), moves to sell certain property of the estate by auction pursuant to 11 U.S.C. §363(b), and to pay the commissions and expenses of the auctioneer pursuant to 11 U.S.C. §330. The Trustee states the following in support of this Motion:

**Parties and Jurisdiction**

1. On August 31, 2017, the Debtor filed a voluntary petition in this Court under Chapter 7 of the Bankruptcy Code.
2. The Trustee is the duly appointed Chapter 7 trustee for the bankruptcy estate.
3. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157.
4. The Court has subject-matter and personal jurisdiction over all parties in interest pursuant to 28 U.S.C. § 1334.
5. Venue lies in this Court pursuant to 28 U.S.C. § 1409.

**Motion to Sell**

6. The Debtor was a general contractor operating in Richmond, Virginia. In the operation of its business, the Debtor owned a vehicle and a trailer (the “Personal Property”).

7. The Personal Property constitute property of the estate pursuant to 11 U.S.C. § 541(a) (“The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.”). The Trustee confirms there are no liens against the Personal Property.

8. The Trustee is authorized to sell the Personal Property pursuant to 11 U.S.C. § 363(b), which provides:

The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, . . .

9. In exercising his business judgment, the Trustee engaged Motley’s Asset Disposition Group (“Motley’s”) to market and to sell the Personal Property by auction. Motley’s is a highly qualified auctioneer whose business includes the sale of vehicles and trailers. Motley’s will market the Personal Property for an absolute auction. The Trustee proposes to compensate Motley’s by paying a twelve percent (12%) commission on the highest bid price for each or all of the Personal Property. Motley’s intends to charge a buyer’s premium of ten percent (10%), which shall not be part of the highest bid price and which shall be paid solely by the buyer. The Trustee shall also reimburse Motley’s to remove and to secure the Personal Property, which amount is \$150.00.

**Motion to Approve Payment of Commissions and Expenses to Auctioneer**

10. The Trustee seeks to pay Motley's from the sales proceeds in accordance with industry standards. The Trustee submits the commissions are fair and reasonable for marketing and auctioning the Personal Property. The Trustee seeks approval of the commissions and the expenses without further application, which will save the estate the costs to prepare, file and prosecute a separate pleading.

11. The Trustee requests the Court to authorize him to obtain new certificates of title, if necessary, so that he can transfer title to the ultimate buyers.

12. The Trustee requests the Court to waive the stay under Federal Rules of Bankruptcy Procedure 6004(h) ("An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise."). In the instant case, there are no liens on the Personal Property and no controversy regarding entitlement to the sale proceeds. Accordingly, cause exists for the Court to exercise its discretion and abrogate the 14-day stay.

WHEREFORE, the Trustee requests the Court to authorize the relief sought herein and to award any other related relief the Court deems proper.

**BRUCE E. ROBINSON, TRUSTEE**

By: /s/ Loc Pfeiffer

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*Counsel for Bruce E. Robinson, Trustee*

**NOTICE OF MOTION**

**Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one). If you do not want the Court to grant the relief sought in the motion, or if you want the court to consider your view on the motion, you or your attorney must do the following:

1. You must file with the court, at the address shown below, a written response pursuant to Local Bankruptcy Rules 9013-1 and 2004-1 ***no later than May 8, 2018.***

Clerk of Court  
United States Bankruptcy Court  
701 E. Broad Street  
Richmond, VA 23219

2. You must also mail a copy to:

Loc Pfeiffer, Esq.  
Kutak Rock LLP  
901 East Byrd Street, Suite 1000  
Richmond, Virginia 23219

3. No hearing has been set to consider the Motion. If you object to the Motion, you must file the objection timely. If a hearing is required, you must attend the hearing in addition to filing a written objection to the Motion. If you fail to file timely a written response and to attend the hearing, the Court may consider any objection you may have waived and enter an Order granting the relief requested in the Motion.

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on April 16, 2018, a true copy of the foregoing Application was served via the Court's ECF system on all necessary parties and the parties on the attached Service List.

/s/ Loc Pfeiffer  
Counsel

**Service List**

Acors and Griffith  
1603 Darbytown Road  
Henrico, VA 23231-0000

Ally Bank  
PO Box 130424  
Roseville, MN 55113-0004

Ally Bank, by and through its servicer  
Ally Financial Inc.  
c/o Carl A. Eason, Esquire  
200 Bendix Road, Suite 300  
Virginia Beach, VA 23452

Ally Financial  
PO Box 9001951  
Louisville, KY 40290-0000

Anthony's Decorative Hardware  
2219 Tomlynn Street  
Richmond, VA 23230-0000

Appliance Contract Sale  
1328 Gaskins Road  
Richmond, VA 23238

Appliance Contract Sales  
1328 Gaskins Road  
Henrico, VA 23238-0000

Architectural Custom Woodwork Inc.  
44 Plaza Dr.  
Manakin-Sabot, VA 23103

Big Wheel Painting  
13429 Namozine Road  
Amelia, VA 23002-0000

Bremac  
8133 Mechanisville Turnpike  
Mechanicsville, VA 23111-0000

Bremac, Inc.  
c/o Edward S. Whitlock, III, Esq.

Lafayette, Ayers & Whitlock, PLC  
10160 Staples Mill Road, Suite 105  
Glen Allen, VA 23060

Breslin LLC  
8273 Franklin Lane  
Mechanicsville, VA 23111-0000

Bruce Robertson Land Surveying  
P.O. Box 35311  
Richmond, VA 23235-0000

Builders First Source  
1225 Tappahannock Blvd.  
Tappahannock, VA 22560-0000

Capital One  
PO Box 30285  
Salt Lake City, UT 84130-0000

Capital One Bank (USA), N.A.  
by American InfoSource LP as agent  
PO Box 71083  
Charlotte, NC 28272-1083

Carrol Plumbing and Heating  
8141 Virginia Pine Court  
Richmond, VA 23237-0000

Chase Bank  
PO Box 15298  
Wilmington, DE 19850-0000

Comcast  
Attn: Bankruptcy  
PO Box 3012  
Southeastern, PA 19398-0000

Costen Floors  
9840 Maryland Drive  
Henrico, VA 23233-0000

DBC Construction, Inc.  
PO Box 2231  
Ashland, VA 23005-0000

Discover Bank  
Discover Products Inc  
PO Box 3025  
New Albany Ohio 43054-3025

Discover Business  
PO Box 30943  
Salt Lake City, UT 84130-0000

Eagle Landscaping  
3235 Friars Walk Lane  
Glen Allen, VA 23059-0000

Eagle Landscaping, LLC  
7807 Wistar Woods PL  
Henrico, VA 23228

ECS Mid Atlantic  
2119 D Hamilton Street  
Richmond, VA 23230-0000

Foster Plumbing and Heating  
11301 Business Center Drive  
Richmond, VA 23235-0000

Glen Allen Glass & Mirror  
14411 Ashland Road  
Glen Allen, VA 23059-0000

Glen Allen Glass & Mirror, LLC  
c/o Edward S. Whitlock, III, Esq.  
Lafayette, Ayers & Whitlock, PLC  
10160 Staples Mill Road, Suite 105  
Glen Allen, VA 23060

Gray's Plumbing  
8044 Old Dutch Lane  
Mechanicsville, VA 23111-0000

Green Solutions LLC  
4607 Leonard Parkway  
Richmond, VA 23226-0000

Hardesty Construction  
14430 Sommerville Court  
Suite B  
Midlothian, VA 23113-0000

Harding Masonry  
7810 Silktree Place  
Mechanicsville, VA 23111-0000

Harper Services, Inc.  
1506 Bexhill Road  
Henrico, VA 23229-0000

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-0000

J. William Gray, Jr.  
103 Running Cedar Circle  
Henrico, VA 23229-0000

John W Gray Jr  
JW Gray  
103 Running Cedar Cir.  
Richmond, VA 23229

Kerschbamer Woodworking, Inc  
1701 12th Street  
Lynchburg, VA 24501-0000

Lafayette Ayers & Whitlock  
10160 Staples Mill Road  
Suite 105  
Glen Allen, VA 23060-0000

Layman Brothers  
2409 New Dorset Terrace  
Powhatan, VA 23139-0000

Martin Star Cabinetry and Desi  
1610 W Main Street  
Richmond, VA 23220-0000

Mason Electric  
8820 Winterpock Road  
Chesterfield, VA 23832-0000

McLaughlin Building Associates  
2093 Dabney Road  
Richmond, VA 23230-0000

Metro Electric  
6407 Mallory Drive  
Richmond, VA 23226-0000

Michael & Janice Locher  
12 Westham Parkway  
Richmond, VA 23229

Michael and Bevin Kehoe  
4 Calycanthus Road  
Richmond, VA 23221-0000

Mike and Janice Locher  
12 Westham Parkway  
Henrico, VA 23229-0000

Morris Tile Distributors  
2280 Dabney Road  
Richmond, VA 23230-0000

Office of Reorganization  
SEC  
3475 Lenox Road, NE, Ste. 1002  
Atlanta, GA 30326-7625

Phase II Construction  
Stephen G. Condrey  
15181 Whispering Springs Pl.  
Montpelier, VA 23192

Phase II Contruction  
15181 Whispering Springs Place  
Montpelier, VA 23192-0000

Rich and Bradley Crawford  
104 Windsor Way  
Richmond, VA 23221-0000

S.B. Cox, Inc.  
901 Potomac Street  
Henrico, VA 23231-0000

Sanjay Bhagchandani  
214 Canterbury Road  
Richmond, VA 23221-0000

Sharon Reese / Dan Brown  
4530 Village Run Drive  
Glen Allen, VA 23060-0000

Sharon Reese / Dan Brown  
Canfield, Wells & Kruck, LLP  
4124 E Parham Rd  
Richmond, VA 23228

Sherman D. King Contracting  
PO Box 37143  
Richmond, VA 23234-0000

Shower Doors and More  
2142 Tomlynn Street  
Richmond, VA 23230-0000

Swift Creek Masonry  
12207 Princess Mary Terrace  
Chesterfield, VA 23838-0000

Tribble Electric  
1575 Mountain Road  
Glen Allen, VA 23060-0000

Union Bank & Trust  
PO Box 940  
Ruther Glen, VA 22546-0000

Union Bank & Trust  
PO Box 446  
Bowling Green, VA 22427-0000

Universal Builders  
11215 Church Road  
Henrico, VA 23233-0000

Verizon  
by American InfoSource LP as agent  
4515 N Santa Fe Ave  
Oklahoma City, OK 73118

Virginia Building and Remodeli  
9608 Goneway Drive  
Henrico, VA 23238-0000

Verizon Wireless  
P.O. Box 25505  
Lehigh Valley, PA 18002-0000